

**CONSERVATION COMMISSION
AGENDA
APRIL 18, 2012
7:00 PM
TOWN HALL - 472 MAIN STREET - ROOM 204**

7:00 Notice of Intent - 36 Charter Road - High School Lower Fields Project – 85-1087 (010 - 011)

Applicant: Acton-Boxborough Regional School District Representative: Gale Associates
Proposed construction of the “lower fields project”, which will include the installation of two synthetic turf recreation fields, improvements to an existing recreation surface, lighting, construction of an access drive, parking lot, associated drainage structures and site improvements, within 100’ of wetlands.

Special vote noting variance from setbacks and change/delete wording of Bylaw standard conditions 18, 19 & 20 (50, 75’ setbacks and use of fertilizers, pesticides, herbicides within 50’).

7:15 Business

- SuAsCo Cooperative Invasives Species Management Area - Bettina Abe (020)
- Suggested donation for events at the Acton Arboretum - Bettina Abe (021)

7:20 Request for Determination - 960 Main Street - Water District of Acton & Wildflower Society (030)

Representative: Brett Trowbridge - proposed vegetation management via tree cutting to restore wild lupine habitat within 100’ of a wetland.

7:30 Request for Determination - Town of Acton - Road Resurfacing 2012 (040)

Proposed road milling and resurfacing on Central Street (Martin St. to Main St.), School Street (Chadwick St. to house #174 School St.), Robbins Street, Knox Trail, Main Street (Rt. 111 to Hayward Rd.) some work will occur within 100’ of wetlands.

7:40 Notice of Intent - 18 Wetherbee - John Durkin (050)

Proposed installation of an in-ground pool within 200’ of Nashoba Brook, and within 100’ of wetlands.

7:45 Hybrid Farm Discussion (060-065)

Request for Certificate of Compliance (partial) - 81 River Street - DEP File 85-991 (070)
(tbka #69 River Street)

MINUTES

February 1	}	Chair signature
February 8 osrp		
February 15		
February 22 osrp		
March 7		

March 21 Comments rec’d by TT, FP, TM, ADM Vote & Sign

February 29 osrp outstanding

**CONSERVATION COMMISSION
MINUTES
APRIL 18, 2012
7:00 PM
TOWN HALL - 472 MAIN STREET - ROOM 204**

COMMISSIONERS PRESENT: Terry Maitland, Andrew Magee, Amy Green, Fran Portante, Jim Colman, Bill Froberg, Tom Arnold

CONSERVATION ADMINISTRATOR & RECORDING SECRETARY: Tom Tidman, Bettina Abe

VISITORS: Peter Spano, JD Head, Bettina Abe, Corey York, Clement Moritz, Wick and Rita McConnon

7:00 Notice of Intent - 36 Charter Road - High School Lower Fields Project - 85-1087 (010 - 011)

Applicant: Acton-Boxborough Regional School District Representative: Gale Associates

** Mr. Froberg recused himself from the hearing as he is a member of the Board of Directors for the Acton Boxborough Youth Soccer (ABYS).

JD Head from the AB Regional School District gave a brief introduction.

Peter Spano from Gale Associates presented plans for the proposed renovation project that will consist of the reconstruction of one natural turf multipurpose field, the construction of two new synthetic turf multipurpose fields with athletic lighting, expansion of existing parking area, improvements to the adjacent T.J. O'Grady Skate Park, improvements to stormwater management system and related site utilities and appurtenances.

Mr. Spano noted that the site is constrained by surrounding wetlands on the north, east and south sides of the existing fields and an existing drainage swale. The existing recreation field is heavily used by school teams. The proposed parking lot expansion includes the parking area that will need to be relocated due to the proposed improvements at the Skate Park and accommodates additional parking spaces for the users. The athletic fields will stay within their existing footprint. Synthetic turf will provide a more playable area year-round. Synthetic turf also allows for vertical drainage through the engineered stone base; it holds stormwater in the stone voids, most rain water infiltrates below the playing surface. The porous design promotes groundwater recharge. In the case of extreme rain events proposed under-drains will pick up the stormwater and discharge it at a single point.

Stormwater drainage from the parking lot will be directed to a bio-retention area before overflowing to the adjacent wetlands.

Upon query by Mr. Arnold, Mr. Spano reported, if approved, the project would start around June 1st and be completed and for the fall season. The synthetic field will require stripping the top soil, provide a nine to twelve inch stone base with an additional two inches of rubber for the turf. The proposed elevation of the fields will be approximately six inches higher than the existing field elevation.

Upon query by Mr. Maitland, Mr. Spano reported that groundwater is four feet below the existing play surface; there will be a four foot high fence with ten feet of protective netting above with controlled entrances.

Upon query by Mr. Magee, Mr. Spano reported that the proposed fence will be ten feet behind the soccer goal.

Upon query by Ms. Green, Mr. Spano reported that the perimeter drain is inside the field and he is confident that grading will stay within the existing field perimeter.

Ms. Green stated that she would like reassurance that there will not be any grading in the wetlands and would like to look at the wetland flag locations along the east side of the field.

Ms. Portante noted that the proposed meadow space that will be provided will need management of invasive species and a mowing schedule.

Mr. Magee agreed that a mowing area will need to be identified to define the meadow so it is maintained as such.

Ms. Green and Ms. Portante discussed the bio-retention area.

Mr. Colman noted that a better barrier is needed along the north side of the grass field. Mr. Spano stated that it is possible to use the stones from the wall being removed along the edge of the skate park.

Mr. Maitland stated that he is concerned about the accuracy of the wetland delineation.

Mr. Magee stated that he would like to take a second look at the delineation along the parking lot.

Upon query by Mr. Spano, Mr. Magee agreed that he would like to revisit the field flagging.

Ms. Green noted that there is not a detailed planting plan included with the NOI for the proposed bio-retention area, there are some plants noted but not the density or number of species.

Ms. Green suggested planting six different shrub species every five feet and to check the soil mixture being used. Mr. Spano stated that he will have a landscape architect review the plan and comply.

Upon query by Ms. Green, Mr. Spano reported that the outlet point of the sub-drain will be flared.

Mr. Maitland reviewed additional information the Commission will require:

1. Operations & Maintenance manual, with a naturalization plan for the meadow that specifically outlines the frequency of mowing?
2. The easterly side of the field and parking lot shall be reflagged and shown on amended plans?

Upon agreement by Mr. Spano, Mr. Maitland continued the hearing to May 2 at 7:40PM. Mr. Tidman and Ms. Green will review the wetland delineation with Lindsey Barbee from GALE Associates before May 2.

[See file in the Conservation Office also located in DocuShare: Conservation Commission - 2012 Meetings 04-18-2012 - (010 - 011) and Conservation Commission - Wetlands Filings - 36 Charter Road - Lower Fields Project 2012.]

7:15 Business

- SuAsCo Cooperative Invasives Species Management Area (020)

Mr. Maitland tabled the discussion until later this evening.

- Suggested donation for events at the Acton Arboretum (021)

Bettina Abe outlined what the Friends of the Acton Arboretum (FAA) suggests for donations for events to be held at the arboretum of \$150 and \$200 depending on the number of attendees (1-25 & up to 50 respectively).

[See file in the Conservation Office also located in DocuShare: Conservation Commission - 2012 Meetings 04-18-2012 - (021) Special Events - Suggested Donation - Acton Arboretum]

Mr. Maitland tabled the discussion so the Commission can gather more information.

8:10 Request for Determination - 960 Main Street - Water District of Acton & Wildflower Society (030)

Brett Trowbridge from Oxbow Associates presented plans for proposed vegetation management (tree cutting) to restore a rare plant habitat for a population of wild lupine on existing Water District property. He is working with Matt Mostoller from the Water District; trees to be removed are young pine along an abandoned railway where several populations of wild lupine (*Lupinus perennis*) exist in the area.

Hearing no comments or questions, Mr. Maitland closed the meeting.

Determination of Applicability - 960 Main Street

Mr. Magee moved that the Commission finds work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act, said work does not require the filing of a Notice of Intent (-3); Ms. Green 2nd, unanimous.

[See file in the Conservation Office also located in DocuShare: Conservation Commission - 2012 Meetings 04-18-2012 - (030) and Conservation Commission - Wetlands Filings - 960 Main Street.]

Request for Determination - Town of Acton - Road Resurfacing 2012 (040)

Corey York, DPW Director, presented plans for proposed road milling and resurfacing on Central Street (Martin St. to Main St.), School Street (Chadwick St. to house #174 School St.), Robbins Street, Knox Trail, Main Street (Rt. 111 to Hayward Rd.) some work will occur within 100' of wetlands. The Town will not be widening the roadways and plan to start work within the next three weeks.

Hearing no comments or questions, Mr. Maitland closed the meeting.

Determination of Applicability - Town of Acton - Road Resurfacing

Mr. Magee moved that the Commission finds work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act, said work does not require the filing of a Notice of Intent (-3); Mr. Arnold 2nd, unanimous.

[See file in the Conservation Office also located in DocuShare: Conservation Commission - 2012 Meetings 04-18-2012 - (040) and Conservation Commission - Wetlands Filings - Town of Acton Road Resurfacing.]

Notice of Intent - 18 Wetherbee Street - John Durkin (050)

John Durkin, homeowner, presented proposed plans for the installation of an in-ground pool, patio and associated landscaping within 200' of Nashoba Brook, and within 100' of wetlands. The proposed pool will be located adjacent to the existing house within existing lawn area. He has lived in location for more than 30 years, the lot is 2.08 acres and entirely within the 200' riverfront area. The proposed construction will alter approximately 3,000 s.f. of outer riparian zone and plans to start work this spring/summer.

Clement Moritz, abutter from Wetherbee Street, expressed concern about construction equipment and the expected dust and noise.

Mr. Maitland clarified that the Commission is strictly reviewing the proposed pool location in proximity to resource areas.

Mr. Moritz also stated that he is concerned that Mr. Durkin is encroaching onto the future bike path (rail trail) property. Mr. Durkin assured that he is not encroaching onto abutter property.

Upon query by Ms. Portante, Mr. Durkin stated that the existing shed will be removed.

The Commission discussed the percentage of riverfront alteration on the property.

Hearing no further comments or questions, Mr. Maitland closed the hearing.

Decision - 18 Wetherbee Street

Ms. Portante moved that the Commission issue a standard Order of Conditions for the plans as presented; Mr. Arnold 2nd, unanimous.

[See file in the Conservation Office also located in DocuShare: Conservation Commission - 2012 Meetings 04-18-2012 - (050) and Conservation Commission - Wetlands Filings - 18 Wetherbee Street.]

7:45 Discussion - Hybrid Farm (060-065)

Mr. Arnold presented Town Counsel's 3/1/2012 memo and outlined what may or may not be allowed on conservation land purchased with the aid of "self-help" funds. Most salient is that public access must be allowed across all conservation areas, including areas where horses are present.

Mr. Froberg commented on the ambiguity of what is considered commercial activity and how that opinion has taken a 180° turnaround from previous opinions by town counsel prohibiting all commercial activity.

Mr. Arnold and Mr. Colman presented the analogy of a summer camp or daycare business that has no other area for children to have recess multiple times every day. That exemplifies limiting public access beyond what is reasonable in sharing the space.

Mr. Colman stated that it is not just commercial activity that is in question. More to the point is whether the activity runs afoul of Town Counsel's 3/1/2012 memo Section A, Items 1-4. It is within the Commission's jurisdiction to define and evaluate the *impact* of a commercial activity.

Ms. Green noted that would include "grazing" as part of a commercial operation and Mr. Colman agreed. A summary of Town Counsel's 3/1/2012 memo Section A, states **"...the key consideration was not what ENTITY was sponsoring/providing the activity, it was the NATURE of the activity itself. Such a program would be permissible as long as..."***[see memo in DocuShare® Conservation Office also located in DocuShare: Conservation Commission - 2012 Meetings 04-18-2012 - (065) - Town Counsel - 03-01-2012 - Memo to Tom Arnold (010 - 011) and Conservation Commission - Hybrid Farm - 217 Nagog Hill Road].*

Mr. Arnold continued that the focus is more on the factors Mr. Colman has written and the impact of any particular activity on the land.

Mr. Maitland agreed that the Conservation Commission (ConCom) can define what that impact may be.

Mr. Magee stated that the example of recess at a daycare puts the emphasis on the cumulative raising of the level of activity to a tipping point.

Mr. Arnold presented the "Factors of Consideration" document and its application. He explained that the McConnons will need to come to the ConCom with a package explanation in the form of an application for what they propose and want in order to run their programs using conservation land. *[063 - Hybrid Farm Factors to Consider 04-03-2012]*

Mr. Colman reviewed and explained the "Draft Factors for Consideration" document and asked the commissioners for their feedback.

Ms. Portante commented that this is a good generic sheet, neutralized and a good place to begin considerations. Mr. Magee agreed that this document shows how we will assess going forward and is a good objective approach.

Ms. Green asked that if there were a "failure to comply," would that trump Item 6 on the Draft Factors sheet? ["The extent to which the proposed uses provide a balance of the above."] She asked moreover, would the Commission then weigh the overall balance of pluses and minuses in determining the overall suitability of uses proposed by Hybrid Farm ?

Mr. Colman replied to Ms. Green, yes. He will add a Provision #7 referring to and being in harmony with Town Counsel's four points (above). Ms. Green suggested adding to Factor #4 to assess *what are the long term (and/or short term), permanent impacts of any activity.*

Mr. Froberg questioned how do we institutionalize a legal opinion stated in an email? Mr. Colman responded that we adopt it by listing Town Counsel's language in Items 1-4.

Ms. Portante asserted that we will make that memo into a document that we could adopt.

Mr. Froberg stipulates that the document, which this ConCom creates, should refer back to Town Counsel's email. Mr. Colman agreed and stated that we will be careful of the wording.

Mr. Magee stated that the commission is not document for legal purposes. Ms. Portante agreed that our generic "factors" document will be to inform our discretionary opinions and is not a mandate.

Mr. Froberg asserts that we should not lose the legal history, but keep it available for future dissenters to this Conservation Commission's decisions so that we can explain, "How did we get here?"

Mr. Colman introduced the next document for consideration, the **Draft License Agreement**. Mr. Arnold stated that this is open for discussion. Mr. Maitland explained that the ConCom has asked the McConnons to provide their plans in a presentation format.

Ms. Portante said that we will develop and evaluate the McConnon's plan according to Jim's factors. Mr. Magee suggested looking at the Community Preservation Act application guidelines as an example because it puts the burden on the presenter to "make your case" as to why the application and license (or grant) should be approved.

Mr. Colman explained that the Conservation Commission will provide the wetlands mapping and buffer zone delineations for the conservation land portion of the Hybrid Farm license application.

Ms. Portante suggested that Area D should be added to Part 2 of the license renewal application noting that many more trees have grown in over three decades, limiting the amount of space for grazing horses and that maybe that Area D should be cleared (trees cut). Mr. Colman noted that could be expensive.

Ms. Green stated that the license will need to be reviewed and renewed each year. The conditions for the 2012 license may be different in five years, allowing for new stipulations and conditions to be met and adapted as the environment changes.

Mr. Colman agreed that the license language could evolve each year, but that the bulk of the conditions would be addressed in the first year's draft, within the context of the Conservation Commission's **Six Factors of Consideration**. He inquired of the commissioners, as to whether there was anything else they felt should be added.

Mr. Magee stated that this draft license agreement is a good generic statement. He likes the outline in general and should be used for any licensing case in the future and the two documents were to go hand in hand.

Mr. Colman stated that figuratively, Hybrid Farm is a 'test case' for this commercial entity licensing process on conservation land. For example, Hybrid or any other entity can add more educational aspects to their use of the property to offset any negative aspects as in a balancing act.

Mr. Arnold asked that the ConCom approve the document for guidance in this case. It is requested that the McConnons use this draft application as a road map to go forth and make a new application.

Mr. Colman stated that up to now the renewal process has been implicit by the Town of Acton accepting Rita and Wick McConnon's payment check each year. Mr. Colman requests that the ConCom receive the McConnon's application by June 19 or earlier. The ConCom can extend the license expiration date if necessary so as not to burden the McConnons with their period of deliberation. The license could be renewed when a decision could be reached.

Mr. Magee agreed that we are not judging if any of the current activities are prohibiting other uses of the property or not. The ConCom has a meeting on June 20. The McConnons may ask Tom Tidman any

wetlands related questions while they are preparing their application. The ConCom cannot deliberate on acceptable license conditions due to open meeting law constraints.

Mr. Magee moved that the ConCom use the Draft Application and the Factors of Consideration as modified during our discussions tonight to fashion a proposal for a renewable application the motion was seconded; motion passed unanimously. *[061 - Draft Hybrid Renewal Application-04-03-2012 and 063 - Hybrid Farm Factors to Consider 04-03-2012]*

Robert F. Guba of Central Street stated to the ConCom that he attended the 1979 Town Meeting and asked of any current commissioners had also been present in 1979.

Mr. Guba reminded Commissioners that in 1979 there were only two conservation land parcels in Acton, Spring Hill and Grassy Pond; for the subsequent ten years, open space was disappearing rapidly, so at the time, the current ConCom purchased 12 more parcels of the Town's current collection of conservation lands. The town's people voted to preserve the properties. There was to be no construction on the land, nor were the woods or fields to be destroyed. The old 1989 Hybrid Farm license stated that vegetation not be destroyed and asked how much land does one horse need? Mr. Guba stated that he feels that the trust of the town's people, at that time, has been failed by oversight since 1989 due to the denuding of grassland on the Nagog Hill portion of conservation land currently licensed to Hybrid Farm. He felt this was due to the current large size of the horse herd living there.

Mr. Magee stated that this ConCom is currently trying to correct that.

Mr. Guba asked if the ConCom was going to be generating another license to Hybrid Farm. Mr. Maitland answered, "Yes."

Mr. Guba asked, if when appointed, are Commissioners given "duties"? Mr. Maitland answered, yes, via the very large, extensive Wetlands Protect Act Rules and Regulations and Town of Acton Wetland Protection Bylaw documents.

Mr. Guba asked, how the tradition gets passed-on to subsequent Commissioners. Ms. Portante stated that tonight the ConCom is establishing ground rules to follow-through with in the future.

Mr. Guba asked if the ConCom will assign the task to monitor adherence to the conditions of the license going forward each year. Mr. Maitland answered, yes, the Conservation Administrator will do that.

Mr. Magee noted that Mr. Guba raises an important point: the ConCom has many duties that are not clear, such as conservation restrictions, and these types of licenses. Those responsibilities were not the original creations of this Commission, yet this ConCom is stuck with them. We are trying to establish frameworks so that future Commissioners can utilize them going forward.

Mr. Colman stated that this is a one year license. We want to become more customized and create a system where this renewal will be done. There is no record or explanation of why eight horses were originally allowed and we are developing a record where the ConCom's deliberations are recorded.

Mr. Guba asked that after Hybrid Farm ceases to exist; will the land be allowed to go back to its natural state? Mr. Colman stated that the ConCom will look at that when the time comes.

Mr. Guba stated that seeing Nagog Hill destroyed breaks his heart. Mr. Maitland responded, noting that this ConCom once thought that any and all commercial activity was not permitted on conservation land acquired with Self Help Grant funds, the ruling has changed; municipalities must adapt with the times. Massachusetts Laws, as well as the rules of the Department of Conservation and Recreation (DCR), are shifting. The thread is that Commissioners have a lot of latitude.

Wick McConnon stated to the Commission that he was present at the 1979 Acton Town Meeting; the Chair of the Conservation Commission at the time, as well as Mr. Brewster Conant, had asked if Hybrid

Farm would keep the current use of their land use as agricultural. They wanted the land to be kept open and did not want it to become forested; people see a lot of value in agriculture and open land.

Rita McConnon asked if they could continue with their operations while they are writing their application. Mr. Colman answered yes, the timing of the application process may not be optimal for planting grass for example. Mr. Colman advised the McConnons not to implement any permanent or costly measures before their application is reviewed, because things might change; whatever the McConnons do is at their own risk. In other words they should not use any implementations as a rationale for the future.

Rita McConnon asked if she could use Area A to let teams compete once a week between now and June 2nd. Mr. Colman reminded the McConnons that they have heard the presentation of **Factors of Consideration** here tonight and to use their best judgment of activities going forward before the license application can be reviewed by the Commission this summer.

The ConCom suggested that the McConnons prepare and submit their license application as soon as possible, no later than June 6, as some members will be out of town during the summer months.

Mr. Maitland noted that there may be some exchanges and requests that go back and forth as the license conditions are presented and discussed.

Mr. Colman will present a red-line draft to the ConCom changing several items on the documents, such as the short and long term impacts on the land in addition to making it a generic document that can be applied in other different future cases.

Business

- SuAsCo Cooperative Invasives Species Management Area - (020)

Mr. Maitland brought the subject back to the table.

Bettina Abe requested that the Commission join the CISMA organization as a supporting member.

Mr. Colman moved that the Commission join as requested; Ms. Green 2nd, unanimous.

Request for Certificate of Compliance (partial) - 81 River Street - DEP File 85-991 (070)

(tbka #69 River Street)

The Commission expressed concern regarding piles of material on-site, questioned what is not yet done on the site relative to the incomplete bio-retention areas and requested that the applicant come before the Commission to explain the status. No other action taken at this time.

MINUTES

Ms. Portante moved that the Commission approve the minutes of March 21, 2012; Mr. Magee 2nd; unanimous.

10:46 Meeting adjourned.



Terry Maitland
Chair

04-18-2012

Edit Selected... Add...

<input type="checkbox"/>	Type	Title	Owner	Edited	SI
<input type="checkbox"/>		0001 - April 18 Agenda	naturaires	04/13/12	z k
<input type="checkbox"/>		010 - Notice of Intent - 36 Charter Road - Lower Fields Project	naturaires	04/17/12	k
<input type="checkbox"/>		011 - Notice of Intent Plans - 36 Charter Road - Lower Fields Project	naturaires	04/10/12	k
<input type="checkbox"/>		020 - SuasCo CISMA Partnership - Memo to ConCom	naturaires	04/10/12	5 k
<input type="checkbox"/>		021 - Special Events - Suggested Donation - Action Arboretum	naturaires	04/13/12	1 k
<input type="checkbox"/>		030 - Request for Determination - 960 Main Street	naturaires	04/10/12	k
<input type="checkbox"/>		040 - Request for Determination - Road Repaving 2012	naturaires	04/30/12	k
<input type="checkbox"/>		050 - Notice of Intent - 18 Wetherbee Street	naturaires	04/13/12	z k
<input type="checkbox"/>		060 - Hybrid Farm - 07-19-1989 License Agreement	naturaires	04/12/12	1 k
<input type="checkbox"/>		061 - Draft Hybrid Renewal Application-04-03-2012	naturaires	04/12/12	1 k
<input type="checkbox"/>		062 - Hybrid Farm ABCD Land Activities Photo Map001	naturaires	04/12/12	1 k
<input type="checkbox"/>		063 - Hybrid Farm Factors to Consider 04-03-2012	naturaires	04/13/12	2 k
<input type="checkbox"/>		064 - Town Counsel - 04-22-2011 - Memo to Tom Arnold and Tom Tidman	naturaires	04/12/12	1 k
<input type="checkbox"/>		065 - Town Counsel - 03-01-2012 - Memo to Tom Arnold	naturaires	04/13/12	z k
<input type="checkbox"/>		070 - Request for Certificate of Compliance (partial) - B1 River Street - Lot 2A - 85-991	naturaires	04/13/12	z k